



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 4, 2022

Judge J. Campbell Barker  
United States District Court  
Eastern District of Texas  
211 Ferguson  
Tyler, Texas 75702

*By electronic filing*

Re: Case 6:21-cv-00191, *Texas v. Brooks-LaSure*  
Supplemental letter brief on effect of CMS approval of programs  
(*see* ECF 101)

Dear Judge Barker:

Count 9 of the First Amended Complaint and Section III.a of the Defendants' Motion for Judgment on the Pleadings should be dismissed and denied, respectively, as moot. Count 9 alleges that CMS unlawfully withheld and unreasonably delayed approval of the state-directed payment programs contemplated in the extension of Texas's demonstration project. *See* ECF 54 ¶¶ 177–187. CMS has now approved those programs, *see* ECF 100, meaning that Texas has received all of the relief available to it on that count. Section III.a of the Defendants' Rule 12(c) motion to dismiss, ECF 67, which is directed at the moot Count 9, is therefore itself moot.

CMS's approval of the programs does not constitute approval of the contracts or rate certifications under those programs. *See* ECF 100-1 at 1; 100-2 at 1; 100-3 at 1. It is possible that CMS could unlawfully withhold or unreasonably delay those approvals, but such a claim would not accrue until the future.

Please let us know if you require anything else.

Sincerely,

/s/ Leif A. Olson  
Leif A. Olson  
Special Counsel  
leif.olson@oag.texas.gov  
*Counsel for Plaintiffs*

**cc by electronic filing: all counsel of record**